

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

RPFC.No. 66 of 2003()

CRMA.392/2000 of FAMILY COURT, MANJERI
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REVISION PETITIONER/RESPONDENT

V.MUSTAFA S/O. AYAMMATHU, ENATHI,
ARIMANAL, KALIKAVU, NILAMBUR TALUK,
MALAPPURAM DISTRICT

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: PETITIONERS AND STATE

1. MUNDAKKODAN NAFEESA D/O. KUNHALAVI,
MUNDAKKODAN HOUSE, KANARAMPADI, AIRMANAL P.O.,
KALIKAVU, NILAMBUR TALUK, MALAPPURAM DISTRICT.
2. RASHEEDA-MINOR, REPRESENTED BY THE
FIRST RESPONDENT-GUARDIAN-MOTHER
3. RAFEEQUE-MINOR-REPRESENTED BY THE
FIRST RESPONDENT-GUARDIAN-MOTHER
4. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31

BY ADV. SRI.K.M.SATHYANATHA MENON
BY PUBLIC PROSECUTOR SRI.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RPFC66/2003

ORDER ON CRL.M.A.NO.5647/2003 IN R.P.(FC) NO.66/2003

DISMISSED

23.10.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

R.P.(FC) No.66 of 2003

Dated this the 23rd day of October, 2007

O R D E R

The revision petitioner who is the respondent, in M.C.No. 392/2000 in the proceedings initiated under Section 125 CrI.P.C. and under orders to pay maintenance to the petitioners 2 and 3 of the minor children of the respondent/ revision petitioner at the rate of Rs.500/- per month, has sought for setting aside the same alleging defective appreciation of evidence.

2. The M.C. was filed by the first petitioner alleging that the respondent is the father of the petitioners 2 and 3 twins born to her on 28.2.1992. It is her case that she was married to one Ummer and that he divorced her on pronouncing thalak. Subsequently, she got acquainted with the respondent and had sexual intercourse on several occasions and that she became pregnant. He promised to look after her and the children as he is not in a position to marry her as he is already having another wife and children. It is her case that he was maintained her and the children but subsequently stopped giving the amounts. She

has also produced Ext. P1 copy of the assignment deed dated 12.3.1991 as per which 9½ cents of property was assigned to her by the respondent. According to her, she was not paid any consideration for the Ext. P1 assignment deed. She has also produced Ext. P2 discharge certificate and Ext. P3 copy of the accident register cum wound certificate with respect to the second petitioner minor child wherein the name of the respondent is mentioned as the father of the child.

3. On the other hand, the respondent/revision petitioner has denied paternity of the children and according to him one Ummer is still the husband of the first petitioner and that he has not divorced her. He has also produced Exts. D1 and D2 birth certificates of second and third petitioners wherein the name of the father is mentioned as Ummer. It is the case of PW1, the first petitioner, that the respondent paid the hospital expenses at the time of delivery and it was he who managed to mention the name of Ummer as the father of the children in Exts. D1 and D2. PW4, Ummer the alleged former husband of the first petitioner has testified in proof of the talak effected by him and PW5, the Secretary of the Mosque, and PW6, the neighbour, has

supported the case of thalak effected by PW4. PW3 is a witness who has stated that he had taken the child lying under a coconut tree and took the child to the police station. It is the case of PW1 that she had brought the child to the husband of the respondent and laid the child at the feet of the respondent and the respondent threw the child away.

4. The Family Court found on the basis of evidence PWs' 1, 4, 5 and 6 that the case of the thalak pronounced by PW4 stood proved and hence presumption under Section 112 of the Evidence Act would not be applicable.

5. The court below drew an adverse presumption against the respondent as he retreated from the undertaking that he shall appear before the laboratory for DNA test. Although, the first petitioner went twice to Rajiv Gandhi Centre for Biotechnology, Thiruvananthapuram the respondent evaded and did not appear to undergo the DNA test. It was represented by the counsel before the court below that he was willing to undergo the DNA test. Reluctance of the respondent to undergo the DNA test is very much relevant in the circumstances, as observed by the court below. The above fact as well as the

version of PW1 that as per Ext. P1 assignment deed the respondent gave her 9½ cents of land without receiving any consideration also indicate that the version of PW1 is true although an amount is mentioned as consideration in the document. In the circumstances, considering the evidence as a whole, I find that the order of the court below is supported by proper reasons. I find that no interference is called for.

The revision petition is dismissed.

**K.R.UDAYABHANU,
JUDGE**

csl